

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,
Plaintiff,

v.

[2] RAMON RAMOS-DAVIS,
Defendant.

CRIMINAL NO. 08-163 (ADC)

REPORT & RECOMMENDATION

On June 15, 2008, co-defendant [2] Ramón Ramos-Davis (“Ramos-Davis”) filed a motion to suppress certain audio recordings and their transcripts on inaudibility and inaccuracy grounds. (Docket 143.) In particular, Ramos-Davis requested the suppression of recordings N-1, N-3, N-6, and N-8. *Id.* On July 24, 2008, an *in camera* hearing was held with defense counsel Ramón M. González and Assistant U.S. Attorneys Myriam Fernández and Mariana Bauzá.

After listening to all four recordings mentioned above, the undersigned finds that despite of the fact that some of these recordings contain loud background noise (such as, for example, music), none of them reach the point where “the inaudible parts are so substantial as to make the rest more misleading than helpful.” U.S. v. Carbone, 798 F.2d 21, 23 (1st Cir. 1986) (citations omitted). In that respect, it is respectfully recommended that the motion to suppress recordings N-1, N-3, N-6, and N-8 on audibility grounds be denied.

As to whether the transcripts provided by the government accurately state what is being heard in the recordings, however, the undersigned finds that some of defendant’s contentions have merit and that the transcripts prepared by the government should be amended as follows:

I. Recording N-1

- Page 2, last entry by the CS, should read “unintelligible”.

- Page 3, first entry by the CS, should read “unintelligible” from the word “nine” up to and including Ramón’s second entry.
- Page 3, second entry by the CS, should have the translation corrected by substituting the word “price” for “offer”.
- Page 4, both entries by the CS should read “unintelligible.”

II. Recording N-3

- Page 2, in its entirety, should read “unintelligible” (aside from the background noise).
- Page 4, second entry by Ramón, should be amended to include the word “bags” right after “twenty-five (25)”. The second paragraph in said entry should be amended as follows: “I will be right back, I’ll tell you in a bit....” Everything else in said paragraph should read “unintelligible”.

III. Recording N-6

- Page 5, Ramón’s second entry, counsel for the government and the defense agreed to change the translation to: “I like U/I drug point very much. And right now U/I.” Rather than having that particular entry attributed to Ramón, it is recommended that the speaker not be identified in the transcript.
- Page 9, Ramón’s third entry, should read “unintelligible [chuckles].”
- Page 14, Ramón’s only entry, should have its translation amended to “Because you know there’s a lot more profit with the eighth.” Rather than having that particular entry attributed to Ramón, it is recommended that the speaker not be identified in the transcript.

IV. Recording N-8

- Page 3, first entry by the CS, should have the phrase “give them” substituted by “unintelligible.”

Aside from the suggestions mentioned above, all the remaining portions of the transcripts submitted by the government seem to accurately indicate the contents of the audio recordings at issue.

WHEREFORE, it is recommended that defendant [2] Ramón Ramos-Davis’ motion (Docket 143) be DENIED as to the request to suppress audio recordings N-1, N-3, N-6, and N-8, but GRANTED IN PART as to the accuracy of the transcripts.

This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B) and Rule 72(d) of the Local Rules of Court. Any objections to the same must be specific and must be filed with the Clerk of Court within ten (10) days of its receipt. Rule 72(d), Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to timely file specific objections to the report and recommendation is a waiver of the right to review by the district court. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986).

SO RECOMMENDED.

In San Juan, Puerto Rico, this 29th day of July, 2008.

s/Marcos E. López
U.S. MAGISTRATE JUDGE